

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,882

IN THE MATTER OF:

Served November 2, 2007

WESTVIEW MEDICAL & REHABILITATION)
SERVICES, P.C. INC., Suspension and)
Investigation of Revocation of)
Certificate No. 510)

Case No. MP-2007-070

This matter is before the Commission on respondent's response to Order No. 10,734, served September 5, 2007.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 510 for a minimum of \$1.5 million in combined-single-limit liability coverage, and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 510 was rendered invalid on April 13, 2007, when the \$1 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,404, served April 13, 2007, noted the automatic suspension of Certificate No. 510 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 510, and gave respondent thirty days to replace the cancelled endorsement and pay the \$50 late fee due under Regulation No. 67-03(c), or face revocation of Certificate No. 510.

Respondent paid the \$50 late fee on May 14, 2007, and submitted a \$1 million primary WMATC Insurance Endorsement on June 15, 2007. The effective date of the new endorsement is June 13, 2007. Thus, it appeared respondent was without primary insurance coverage for sixty-one days, from April 13, 2007, through June 12, 2007.

Under Commission Rule No. 28, respondent is required to verify that it ceased transporting passengers for hire under Certificate No. 510 as directed by Order No. 10,404. Order No. 10,640, served July 18, 2007, accordingly gave respondent thirty days to verify that it ceased operations as of April 13, 2007. Inasmuch as respondent's

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

general tariff covers service rendered to the general public and to clients of the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), respondent was to corroborate its verification with confirmation from DC Medicaid and copies of respondent's business records from January 1, 2007, through July 18, 2007.

Respondent thereafter supplemented the record with proof of \$1 million in primary commercial auto liability insurance effective April 13, 2007, but respondent did not file the corresponding WMATC Insurance Endorsement and failed to comply with the requirement of Order No. 10,640 directing respondent to produce copies of its business records, verify it timely ceased operating its vans, and submit confirmation from DC Medicaid. Instead, respondent contended through the statement of its administrator, Fred R. West, Jr., that respondent abandoned the transportation-for-hire market in 2005. As noted in Order No. 10,734, however, Mr. West acknowledges in a supplemental supporting statement that as of March 17, 2007:

(1) respondent was "a Medicaid sponsored intermediate care facility" (ICF);

(2) respondent's vans were being used to "transport the firm's [twelve] consumers to their respective Day Treatment Provider's work sites; on City-wide outings; medical and dental appointments; and court appearances;" and

(3) respondent was being "reimbursed, on a per diem basis, for total residential and habilitation services."

The Commission considered a similar claim in *In re VOCA Corp. of Wash., D.C.*, No. AP-96-14, Order No. 4851 (May 21, 1996). VOCA operated ICFs in the District of Columbia pursuant to agreements with the DC Department of Human Services (DHS). Under the agreements, VOCA was required to furnish a full range of ICF services, including transportation of group home residents "to and from job training locations and work sites, and occasionally . . . on recreational outings."³ In return, VOCA received "reimbursement of total program expenses, including those relating to the operation of its vehicles."⁴ On these facts, the Commission found "that VOCA's transportation of group home residents -- as paid for by DHS -- is transportation for hire within the meaning of the Compact."⁵ There is nothing in the record to distinguish the transportation described in the VOCA decision from the transportation respondent admits conducting as of March 17 of this year.

Moreover, respondent's successful application for a certificate of authority in 2001 was supported solely by respondent's ICF contract

³ Order No. 4851 at 2.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

with the DC Department of Health.⁶ Thus, respondent had to have known that such transportation requires a valid, unsuspended WMATC certificate of authority.

Order No. 10,734 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or revoke Certificate No. 510, for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding by conducting operations under an invalid/suspended certificate of authority and failing to produce required documents.

In addition, Order No. 10,734 granted respondent fifteen days to submit a request for oral hearing on the condition that respondent specify the grounds for the request, describe the evidence to be adduced, and explain why such evidence cannot be adduced without an oral hearing.

II. RESPONSE TO SHOW CAUSE ORDER

Respondent's response consists of another statement from its administrator, Fred R. West, Jr., but no request for oral hearing. Mr. West no longer contends that applicant ceased operating. Instead, he asserts that respondent's failure to comply with Regulation No. 58 was not knowing and willful because, according to Mr. West, respondent had no reason to anticipate that the insurance company that had filed numerous \$1 million primary WMATC Insurance Endorsements for respondent in the past would suddenly decline to file an endorsement this time. Mr. West, however, admits being aware that these filings were "always tardy" in the past. Thus, even if respondent had no reason to expect the filing would not be made, there was every reason to think it would be made late. In any event, Mr. West's statement says nothing about why respondent did not cease operating after it became clear that the filing had not been made, and why respondent failed to produce the documents required by Order No. 10,640.

III. FINDINGS, ASSESSMENT OF FORFEITURE AND REVOCATION

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.⁷ Each day of the violation constitutes a separate violation.⁸ The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁹

⁶ *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. AP-01-50, Order No. 6308 (Aug. 1, 2001) (approving "contract tariff for transportation under the DC Medicaid Program").

⁷ Compact, tit. II, art. XIII, § 6(f)(i).

⁸ Compact, tit. II, art. XIII, § 6(f)(ii).

⁹ Compact, tit. II, art. XI, § 10(c).

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁰ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.¹¹

The record shows that respondent has yet to file a WMATC Insurance Endorsement for the first \$1 million in coverage for the period beginning April 13, 2007, and ending June 12, 2007. The significance of the WMATC Insurance Endorsement is that, among other things, it extends coverage to any vehicle operated by the insured whether or not identified in the policy. Of course, some commercial auto policies cover any vehicle operated by the insured - but not the two policies, one per vehicle, purchased by respondent. In addition, the WMATC Insurance Endorsement provides that coverage may not be cancelled except on thirty days written notice to the Commission. The certificates of insurance produced by respondent limit such notice to ten days. These are substantial shortcomings that put the public at serious risk of non-recovery. Thus, respondent's failure to comply with Regulation No. 58 in this instance has created a sixty-one day gap of significantly incomplete coverage.

When the signatories and Congress approved the Compact, they designated noncompliance with Commission insurance requirements as the single offense that would automatically invalidate a certificate of authority. They could not have sent a clearer message that maintaining proper insurance coverage is of paramount importance under the Compact.¹² Further, this is not the first time respondent has violated the Commission's insurance requirements. Respondent was suspended on eight previous occasions for insurance infractions.¹³ In fact, the most recent infraction resulted in the revocation of Certificate No. 510.¹⁴ The only reason Certificate No. 510 was reinstated is that respondent filed the necessary WMATC Insurance Endorsement(s) with no interruption in coverage.¹⁵ Against this

¹⁰ *In re Handi-Pro Transp., Inc.*, No. MP-07-060, Order No. 10,817 (Oct. 10, 2007); *In re Special People Transp., LLC*, No. MP-06-103, Order No. 10,683 (Aug. 8, 2007).

¹¹ Order Nos. 10,817 & 10,683.

¹² Order No. 10,817.

¹³ *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2006-045, Order No. 9475 (Apr. 13, 2006); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2005-129, Order No. 9043 (Oct. 13, 2005); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2005-041, Order No. 8651 (Apr. 18, 2005); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2004-189, Order No. 8336 (Oct. 14, 2004); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2004-097, Order No. 8002 (May 11, 2004); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2004-085, Order No. 7940 (Apr. 14, 2004); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2003-114, Order No. 7470 (Oct. 14, 2003); *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2003-040, Order No. 7170 (May 5, 2003).

¹⁴ *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2006-045, Order No. 9888 (Sept. 6, 2006).

¹⁵ *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-2006-045, Order No. 9980 (Oct. 11, 2006).

backdrop, and considering that respondent operated not only while suspended but without the complete protection afforded by the WMATC Insurance Endorsement, we shall revoke Certificate No. 510.¹⁶

We shall also assess a civil forfeiture of \$250 for operating while suspended and \$250 for failing to comply with the document production requirements of Order No. 10,640.¹⁷

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.


3. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of five hundred dollars (\$500).

4. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 510 is hereby revoked for respondent's willful failure to comply with Article XI, Section 6(a), of the Compact, Regulation No. 58, and the orders issued in this proceeding.

5. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 510 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

¹⁶ See *In re Safe Haven. Inc.*, No. MP-02-14, Order No. 6762 (Aug. 7, 2002) (denying reinstatement where respondent operated while suspended and underinsured).

¹⁷ See Order No. 10,817 (assessing \$250 where number of days illegally operated indeterminate); Order No. 10,683 (assessing \$250 forfeiture for failing to produce documents).